D.B. CIVIL SPECIAL APPEAL (W) NO.296/2006

R.S.R.T.C., Jaipur

Vs.

Judge, Labour Court, Jodhpur and Anr.

22.5.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. Sangeet Lodha, for the appellant.
Mr. D.K. Parihar, for the respondent.

Heard learned counsel for the parties.

We are of the opinion that the appeal deserves to be partly allowed. The respondent-workman while employed in the service of the appellant was terminated from service by invoking the standing orders on the ground that he has remained absent from the establishment for more than 10 days without sanctioning of leave.

The termination order was made subject matter of the Industrial Dispute, which was referred to the learned Labour Court, Jodhpur. The learned Labour Court vide order dtd. 1.11.1994 found termination to be invalid and directed his reinstatement with full backwages.

The award was challenged before this Court. During the pendency of the writ petition an application under Section 17B was moved on behalf of the respondent-workman for continuing him payment of last drawn wages during the period he remained unemployed. The statement was made by employer on 15.4.1996 that he was prepared to take the respondent No.2 back on duty and consequently the workman was reinstated. While making these orders learned Single Judge has directed that on reinstatement the workman shall be entitled to back wages payable under Sec. 17B of the Act and that too has been subject to writ petition.

The writ petition was ultimately dismissed on 1.8.2005 by learned Single Judge. Hence, this appeal.

As the workman has not rendered his services from the date of termination until the date of passing of the award and reinstatement and total period of service rendered by the workman before his services were terminated was little more than one year, the award of backwages for this period of services were not justified.

Learned counsel for the respondent candidly also waived his right to backwages.

So far as termination is concerned, it was held to be invalid for the reason that no enquiry has been conducted into the alleged charges for which according to the workman he has sent an application for leave by registered post.

The finding about illgality of termination of service does not suffer from any irregularity which could be interfered with by way of writ of certiorari. Hence, the order of reinstatement cannot be faulted with as it was not a retrenchment but was a termination of service for alleged misconduct.

Moreover, the workman has already been reinstated at the instance of the petitioner himself way back in the year 1996 which also shows that there was no loss of confidence. In these circumstances award of reinstatement is not interfered with. However so far award of backwages is concerned, same is set-aside. Other benefits flowing from reinstatement shall follow as per the award.

The appeal is accordingly partly allowed as aforesaid.

No order as to costs.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

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